



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

Docket No.

V-W-04-C-766

**Park Investors Venture I,
L.L.C.**

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE
WITH REQUEST FOR
ACCESS

Respondent

Ellsworth Industrial Park Site
Downers Grove, Illinois

Proceeding under section 104(e)
of the Comprehensive
Environmental Response,
Compensation, and Liability Act
of 1980, as amended ("CERCLA"),
42 U.S.C. Section 9604(e).

I. PREAMBLE

This Administrative Order ("Order") is issued to Park Investors Venture I, L.L.C. ("Respondent"), the present owner of property at 2518 Wisconsin Avenue, which is in the vicinity of the Ellsworth Industrial Park Site, in Downers Grove, Illinois.

This Order is issued pursuant to the authority vested in the President of the United States by section 104(e)(5) of CERCLA, and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), further delegated to the Regional Administrator by U.S. EPA Delegation No. 14-6, and further delegated to the Director of the Superfund Division by Regional Delegation 14-6.

This Order requires Respondent to grant U.S. EPA and its employees, duly delegated representatives, and contractors entry

and access to all portions of Respondent's property located at 2518 Wisconsin Avenue, Downers Grove, Illinois (the "Property") for the following purposes:

- a. To prepare for and conduct environmental monitoring and sampling of soil and groundwater on the Property;
- b. To handle, prepare for, and dispose of hazardous materials identified during the environmental sampling;
- c. To perform other actions that U.S. EPA determines to be necessary to investigate contamination on the Property; and
- d. To take any other response action necessary to abate any release or threatened release of a hazardous substance, pollutant or contaminant identified during sampling activities which U.S. EPA determines may pose an imminent and substantial endangerment to public health or the environment.

This Order further requires Respondent and/or any employees, agents or representatives of Respondent, to refrain from interfering with access to the Property by U.S. EPA, and its authorized representatives for the purposes set forth herein.

By copy of this Order, the State of Illinois has been notified of the issuance of this Order.

II. FINDINGS OF FACT

Based upon information available on the date of issuance of this Administrative Order, the Director of the Superfund Division of U.S. EPA, Region 5, makes the following findings of fact:

1. The Ellsworth Industrial Site ("Site") consists of certain facilities located in an industrial park initially developed in the 1960s and located in Downers Grove, Illinois south of Burlington Avenue, north of Elmore Street, east of I-355 and west of Belmont Road, and depicted generally on the map attached as Attachment B

2. Respondent owns the Property located at 2518 Wisconsin Avenue, Downers Grove, Illinois, which is within the boundaries of the Ellsworth Industrial Park and which is at or near the Site.

3. Releases of volatile organic compounds ("VOCs") have occurred at the Site.

4. Initial sampling conducted by U.S. EPA and Illinois EPA has detected elevated levels of the VOCs trichloroethylene ("TCE"), tetrachloroethylene ("PCE") and 1,1,1, trichloroethane ("TCA") in soil and groundwater at certain commercial and industrial facilities at the Site, in the vicinity of the Property. These VOCs are common constituents in industrial solvents and degreasers.

5. Hydrogeological data gathered by U.S. EPA indicates that groundwater in the vicinity of the Site flows generally to the south and southeast.

6. Illinois EPA sampled drinking water wells at approximately 546 homes located to the south and southeast of the Site. TCE was detected in wells at approximately 450 of those homes. PCE was detected in wells at approximately 352 of those

homes. TCA was detected in wells at approximately 325 of those homes.

7. Of the roughly 546 drinking water wells sampled by Illinois EPA located to the south and southeast of the Site, approximately 109 exceeded the Maximum Contaminant Level (MCL) for TCE and approximately 83 exceeded the MCL for PCE.

8. The Village of Downers Grove and Du Page County estimate that approximately 800 homes downgradient of the Site and within 1-1/2 miles of the Site use groundwater as a source of drinking water.

9. CVP Systems, Inc. ("CVP") has leased the Property from Respondent and beginning in approximately 1984 has operated metal working machines and a parts washer for its machinery manufacturing operations at the Property.

10. Metal working machines and parts washers typically use industrial solvents and lubricants, which may contain TCE, PCE or TCA. CVP's records indicate that its operations generate waste lubricants

11. The Property was not part of the initial sampling conducted in 2002.

12. U.S. EPA is conducting a second round of sampling at additional commercial industrial facilities in and around the Ellsworth Industrial Park that may also have used and released TCE, PCE or TCA.

13. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other

representatives of U.S. EPA to enter the Property. The activities for which entry is required include the sampling activities described in Section I above.

14. In July, 2003, U.S. EPA requested that Respondents provide consent to access for the sampling activities described in Section I above.

15. By letter dated October 15, 2003, Respondent refused to provide U.S. EPA with access to the Property.

III. DETERMINATIONS OF LAW

Based upon information available on the date of issuance of this Administrative Order, the Superfund Division Director of U.S. EPA, Region 5, makes the following Determinations of Law:

1. The Ellsworth Industrial Park Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. TCE, PCE and TCA are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and as specified in 40 C.F.R. § 302.4, and have been deposited, stored, disposed of, placed, or otherwise located at the Ellsworth Industrial Site.

3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. Respondent is the present "owner" of the Property.

5. U.S. EPA has a reasonable basis to believe that hazardous substances used at the Property may have been released into the environment and the Property may therefore be part of the Ellsworth Industrial Park facility, as defined by Section

101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent may therefore be a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

6. The past, present or potential migration of hazardous substances currently located at or emanating from the facility constitutes a reasonable basis to believe that there may be a "release" or substantial threat of "release," as defined in section 101(22) of CERCLA, into the environment of a hazardous substance from or at the facility.

7. Access to the Respondent's Property is necessary to identify and define the nature and extent of contamination at the Ellsworth Industrial Park, to determine the need for additional response action as defined in section 101(25) of CERCLA, and to protect human health and the environment, within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

8. U.S. EPA's request for access to property owned by the Respondent has been denied.

IV. ORDER

Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby ordered that Respondent comply with U.S. EPA's request for access to the Respondent's Property described in Section II above, pursuant to section 104(e) of CERCLA, in accordance with Paragraphs 1 through 5 below:

1. Respondent shall grant the U.S. EPA and its officers, employees, agents, duly designated representatives, and contractors, including, but not limited to Weston Solutions,

Inc., full and unrestricted access to the Property for the following purposes:

- a. To prepare for and conduct environmental monitoring and sampling of soil and groundwater on the Property;
- b. To handle, prepare for, and dispose of hazardous materials identified during the environmental sampling;
- c. To perform other actions that U.S. EPA determines to be necessary to investigate contamination on the Property; and
- d. To take any other response action necessary to abate any release or threatened release of a hazardous substance, pollutant or contaminant identified during sampling activities which U.S. EPA determines may pose an imminent and substantial endangerment to public health or the environment.

2. Respondent shall provide access to Respondent's property until March 30, 2004, in order to complete the actions described above.

3. Respondent shall allow entry to its property for activities at all reasonable times, as required by section 104(e)(3) of CERCLA.

4. This Administrative Order shall be binding on all employees, agents, lessees, successors and assigns of Respondent. In the event of any conveyance by Respondent, or Respondent's agents, successors and assigns, of any interest in any property which includes an access area, Respondent or Respondent's agents, successors and assigns, shall convey the interest so as to insure continued access by U.S. EPA and/or its representatives for

purposes of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such property so that use will not interfere with activities undertaken pursuant to this Order. Respondent, or Respondent's agents, successors and assigns, shall notify U.S. EPA in-writing at least (30) thirty days before any such conveyance of an interest in property where an access area is located, and shall notify the other parties involved in the conveyance prior to the transfer, of the provisions in this Order.

5. Respondent shall not interfere with U.S. EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e)(3) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Site pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any action taken by Respondent to deny access for the purpose of performing actions described in paragraph IV.1 above, or any attempt to interfere with the actions deemed necessary to complete these actions, shall be deemed a violation of this Administrative Order.

6. Nothing in this Order is meant to limit in any way any right of access or entry to the Property which U.S. EPA, the State of Illinois, and/or local governmental agencies, may have under any statute, regulation, permit or agreement.

V. CONFIDENTIAL BUSINESS INFORMATION

Respondent is hereby advised that, consistent with 18 U.S.C. Section 1905, it may assert a confidentiality claim with respect to any information obtained by U.S. EPA in the course of activities performed on its property under the authority of this Administrative Order. Information accorded protection by 18 U.S.C. Section 1905 includes information relating to or concerning trade secrets, processes, operations, style of work, or apparatus, confidential statistical data, or to the identity, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association. Any such claim will be handled by U.S. EPA in accordance with the Confidential Business Information regulations, found at 40 C.F.R. § 2.201 et seq.

VI. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the above Findings and Determinations is available for review by appointment on weekdays between the hours of 9:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, U.S. EPA, Region V. Please contact Thomas Krueger, Associate Regional Counsel, at (312) 886-0562 to make an appointment to review the Administrative Record.

VII. EFFECTIVE DATE OF ORDER AND OPPORTUNITY TO CONFER

1. This Order shall become effective on the fifth day after it is received by the Respondent.

2. Respondent may request a conference with U.S. EPA to discuss this Order. The conference may be held by telephone. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this Order. Respondent may appear by an attorney or other representative. Any such conference shall take place within 3 days of Respondent's receipt of the Order. Respondent should contact Thomas Krueger, Associate Regional Counsel, at (312) 886-0562 to arrange such a conference.

3. Any comments that Respondent may have regarding this Order, its applicability to Respondent, the correctness of any factual determination upon which the Order is based, or any other relevant and material issue may be reduced to writing and submitted to U.S. EPA within 3 days of Respondent's receipt of this Order. Any such comments should be sent to Thomas Krueger, Associate Regional Counsel (C-14J), Office of Regional Counsel, U.S. EPA - Region 5, 77 West Jackson Street, Chicago, Illinois 60604-3590.

VIII. NOTICE OF INTENTION TO COMPLY

Whether or not Respondent requests a conference with U.S. EPA, within 5 days of receipt of the Order Respondent must notify U.S. EPA in writing whether Respondent will comply with the terms of this Order. Respondent's failure to timely notify U.S. EPA of its unconditional intent to fully comply with the Order shall be construed as a denial of EPA's request for access and shall


constitute a violation of this Order by Respondent. Written notice shall be sent by overnight carrier, return receipt requested, to Thomas Krueger, Associate Regional Counsel (C-14J), Office of Regional Counsel, U.S. EPA - Region 5, 77 West Jackson Street, Chicago, Illinois 60604-3590.

IX. PENALTIES FOR NONCOMPLIANCE

Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Respondent is hereby advised that, pursuant to Section 104(e)(5)(B) of CERCLA and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 40 C.F.R. Part 19, a Court may assess a civil penalty not to exceed \$27,500 per day for each day that a Respondent unreasonably fails to comply with this Order or any part hereof. Nothing herein shall preclude U.S. EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

IT IS SO ORDERED this 20th day of November, 2003.

By:



for William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5